

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Review Petition St No. 26073 of 2004
in
Writ Petition No. 9394 of 2003

Maharashtra Academy of Engineering
& Educational Research, Pune ...Petitioner
VS

Mah University of Health
Science Nasik and ors.....Respondents

Ms Smita Rane for Avinash Thakore for petitioner
Mr.R.V.Govilkar for respondent no.1

CORAM: A.P.SHAH & S.U KAMDAR JJ.

Dated 22.2.2005

P.C:

Heard the learned counsel for the parties.

2. By this Petition the Petitioner Institution seeks review of our order dated 18.6.2004. The Petitioner contends that the representative of the Management who was present in the Court and who had given the undertaking to this Court was not authorised to give the undertaking as has been recorded in our order. Dr. V.D.Karad happens to be the Trustee and Executive President of the Trust, while Prof M T.Karad happens to be the Professor working in the Petitioner Trust, but is not a Trustee of the Institution. Dr. Karad, on

the same day, for his serious ailment, was indoor patient in Breach Candy Hospital, Mumbai and Prof. M T Karad, who is not a Trustee, was representing the Institution before the court, who was also under tremendous pressure because of the ensuing students examinations etc. the learned counsel appearing for the Petitioner misunderstood Prof M T Karad to be a Trustee of the Petitioner Institution and proceeded to give the undertaking. It is further contended that there was every possibility that, if the condition had not been accepted by the Management representative, the students would have lost their term as well as examination and would have been finally out of the MBBS Course. Therefore, under these peculiar circumstances the Petitioner Institution should be relieved of the undertaking given to the Court.

3. In our opinion relieving the Petitioner from undertaking in the case like the one before us would tantamount to putting a premium on dishonesty and breach of solemn obligations. It is an admitted position that the the Management had usurped the Government quota of 50% to which the Management had no right whatsoever. In T M A Pai Foundation vs State of Karnataka ((2002) 8 SCC 481), as explained by the judgement delivered by a

Bench of 5 Judges of the Supreme Court in the case of Islamic Academy of Education vs State of Karnataka ((2003) 6 SCC 697), it has been made clear that certain percentage of seats in the cases of non minority professional colleges can be reserved for admission by the Management and the rest of the seats have to be filled up on the basis of counselling by the State Agencies. In Islamic Academy of Education (supra) a five Judges Bench clearly laid down that for the Academic Year 2003-04, the seats were to be filled in by private managements and the State Government in the ratio of 50:50. Admittedly the admission to the 50% seats from the Government quota have not been given on the basis of merit as per the CET conducted by the Government Agencies. The management has thus committed breach of the directions not only of the Supreme Court in granting admission to the students in both the Management and the State Government quotas, apart from the fact that the Management had no right to fill up 50% seats from the State quota. The Management was fully aware that it was committing gross violation of the orders of the Supreme Court as also breach of directions of the Government of Maharashtra in granting these admissions. By illegally usurping the State Government quota of 50 seats, the Management had

enriched itself and, therefore it was bound to compensate the State Government.

4. In the above circumstances vide order dated 13.6.2004 the admissions were regularised subject to two conditions, namely (i) that the Management will not claim any Management quota for the next three Academic Years and will admit all the 100 students for the next three Academic Years that may be sent by the Government of Maharashtra as if they are from the State Government quota and (ii) that the Management will compensate the State Government for the cost and consequences of its illegal act quantified at Rs.75 lacs in addition to the giving up the Management quota for next three Academic Years i.e. 2004-05, 2005-06 and 2006-07. The learned counsel appearing for the Petitioner Institution after taking instructions from Prof. M.T Karad made a categorical statement that both the above conditions are accepted by the Petitioner Institution and it will not claim any Management quota for three Academic Years and will pay compensation of Rs.75 lacs to the State Government. On the request of the learned counsel for the Petitioner amount of Rs. 75 lacs was allowed to be paid in three instalments.

5. The management representative Prof Karad who was present in court undertook to comply with the aforesaid conditions. It is now sought to be contended that the statement was made on the basis of mistaken fact and no decision was taken as the Trustee and Executive President was admitted in Breach Candy Hospital. The contention is devoid of any substance. Prof M T.Karad happens to be the nephew of the Trustee and Executive President Dr. V.D.Karad and is also a Director of the Institution. It is seen that this is nothing but an attempt to wriggle out of the undertaking given to this court.

6. It is well settled that the discretion of the court should not be exercised in favour of a party who wants to resile from the solemn promise after availing himself of the benefits under the order. In our opinion in the facts and circumstances of the case it will be totally unfair and inequitable to relieve the Petitioner of the solemn promise given to this court. Under the circumstances we do not find any ground to review our order.

7. Review petition is dismissed.